

\*AMENDED BLD-027

December 3, 2009

October 29, 2009

**UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

C.A. No. **08-4005**

LYLE NANCE,  
Appellant

VS.

TERRANCE MOORE; THE ATTORNEY GENERAL  
OF THE STATE OF NEW JERSEY

(D.N.J. Civ. No. 04-cv-03298)

Present: McKEE, RENDELL and CHAGARES, Circuit Judges

Submitted are

- (1) Appellant's request for a certificate of appealability under 28 U.S.C. § 2253(c)(1)
- (2) Appellee's response to application for certificate of appealability;
- (3) Appellant's memorandum of law in support thereof; and
- \*(4) Appellant's motion to supplement the request for a certificate of appealability (docketed as a document in support of the application for a certificate of appealability) accompanied by the supplemental brief**

in the above-captioned case.

Respectfully,

Clerk

MMW/NSS/TRA/isc



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ORDER

The foregoing request for a certificate of appealability is denied. Miller-El v. Cockrell, 537 U.S. 322, 327 (2003). Appellant has not made a substantial showing that conduct of the prosecutor “so infected the trial with unfairness as to make the resulting conviction a denial of due process.” Darden v. Wainwright, 477 U.S. 168, 181 (1986). Appellant has not made a substantial showing that Trial Counsel’s performance fell below an objective standard of reasonableness that prejudiced Appellant. See Strickland v. Washington, 466 U.S. 668, 687-88 (1984). The motion to supplement the request for a certificate of appealability with a pro se brief is denied.

By the Court,

/s/ Theodore A. McKee  
Circuit Judge

Dated: December 14, 2009

DWB/cc:

Joshua L Markowitz, Esq.

Sara A Friedman, Esq.



*Marcia M. Waldron*

Marcia M. Waldron, Clerk

Certified order issued in lieu of mandate.